IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 24143 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

AMRUTBHAI RAMABHAI PATEL - Petitioner(s)

Versus

STATE OF GUJARAT & 1 - Respondent(s)

==========

Appearance :

MR NS SHETH for Petitioner(s) : 1,
Ms. Archana Raval, AGP for Respondent(s) : 1,
RULE SERVED BY DS for Respondent(s) : 1 - 2.

==========

CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 29/12/2005

ORAL JUDGMENT

By way of this petition under Article 226 of the Constitution of India, the petitioner has prayed for an appropriate writ, direction or order directing the respondents to enter 11.6.1987 as Date of Birth of Yoginaben Amrutbhai Patel, daughter of the

petitioner in place of 20th August 1987 as shown in Birth Certificate issued on 19.4.2005 at the office of respondent No.2. The petitioner has also prayed for an appropriate writ, direction or order quashing and setting aside the order dated 13.12.2005 passed below Exh.1 in Criminal Misc. Application No. 235 of 2005 by the learned Judicial Magistrate (F.C.), Dehgam. It appears from the record that in the Birth Certificate issued by the respondent No.2 dated 19th April 2005 by mistake the date of birth is mentioned as 20th August 1987 and therefore initially the petitioner approached the respondent No.2 for correction of entry in the certificate. However, the said application was not considered on the ground that he has no jurisdiction to make correction in the entry and therefore the petitioner approached the learned JMFC, Dehgam, by way of Criminal Misc. Application No. 235 of 2005 for an appropriate direction on the respondent No.2 to make correction in the entry. Evidence was led and thereafter the learned JMFC by order dated 13.12.2005 passed below Exh. 1 in Criminal Misc. Application No. 235 of 2005 held that he has no jurisdiction. The petitioner has therefore preferred the present Special Civil Application under Article 226 of the Constitution of India.

2. Apart from the fact that the order passed by the learned JMFC holding that he has no jurisdiction is correct or not, even on merits also the action of

the respondent No.2 in not making correction in the entry is also contrary to the provision of law, as held by the learned Single Judge of this Court vide order dated 20th June 2005 passed in Special Civil Application No. 7882 of 2005 as well as the order dated 28.2.2005 rendered in Special Civil Application No. 2650 of 2005. On a proper application being made and if the authority is satisfied with regard to genuineness of the same even the respondent No.2 has the jurisdiction to make necessary correction in the entry in the Birth Certificate. The learned A.G.P., is not in a position to dispute the above aspect.

3. Under the circumstances, considering the order passed by this Court in the aforesaid two Special Civil Applications, the respondent No.2 is directed to consider the application submitted by the petitioner for correction of date of birth of Yoginaben Amrutbhai Patel and after verifying the same, he is directed to make necessary correction in the entry of Date of Birth of Yoginaben Amrutbhai Patel. Such an exercise be done within the period of one month from the date of receipt of this order. Rule is made absolute to the aforesaid extent with no order as to costs. Direct service is permitted.

[M.R. Shah, J.]

RMR.